

Message Text

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53

ACTION EUR-25

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RSC-01 PRS-01 SP-03 SS-20 SAJ-01 IO-14 DRC-01 /101 W

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O 271252Z APR 74

FM USMISSION BERLIN

TO SECSTATE WASHDC IMMEDIATE 3294

AMEMBASSY BONN IMMEDIATE

INFO AMEMBASSY LONDON IMMEDIATE

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BERLIN 0715

E.O. 11652: GDS

TAGS: PGOV, WB, GW, GE

SUBJECT: BRUECKMANN CASE

REF:

A. STATE 082930

B. BERLIN 684

1. WE HAVE, IN CONCERT WITH BRITISH MISSION, SUCCEEDED IN REACHING LOCAL US-UK AGREEMENT ON COMPROMISE TEXT OF PROPOSED LETTER TO SENATOR KORBER ON INGRID BRUECKMANN CASE. REVISED TEXT MEETS AS MANY OF DESIDERATA CONTAINED IN REFTEL A AS WE BELIEVE POSSIBLE IN CIRCUMSTANCES, AND WE ARE PREPARED TO MOVE AHEAD WITH DELIVERY OF LETTER TO SENAT AS SOON AS BRITISH AND FRENCH RECEIVE AUTHORIZATION FROM LONDON AND PARIS. (BRITISH INFORM US THEY CANNOT EXPECT GO-AHEAD BEFORE MONDAY, APRIL 29 AND WE WOULD THEREFORE HOPE FOR DELIVERY THAT DATE, UNLESS DEPARTMENT WISHES MAKE SPECIAL PUSH WITH FCO OVER WEEKEND.)

2. REVISED TEXT OF LETTER FOLLOWS:

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BEGIN TEXT.

DEAR SENATOR KORBER:

1. THE ALLIED KOMMANDATURA UNDERSTANDS THAT FRAULEIN INGRID BRUECKMANN HAS MADE APPLICATION TO THE BERLIN KAMMERGERICHT UNDER SECTION 9 OF THE LAW ON INNER GERMAN LEGAL ASSISTANCE OF 1953 FOR A REOPENING OF THAT COURT'S DECISION WHICH DISMISSED THE APPEAL AGAINST THE DECISION OF THE GENERAL-STAATSANWALT AT THE KAMMERGERICHT OF 26 JUNE 1973. THE ALLIED KOMMANDATURA IS ALSO AWARE OF THE JUDGMENT OF 27 MARCH 1974 OF THE FEDERAL CONSTITUTIONAL COURT IN THIS CASE, IN PARTICULAR THE COURT'S FINDINGS THAT IT WAS NOT COMPETENT TO REVIEW ACTS OF BERLIN PUBLIC AUTHORITIES IN VIEW OF THE SUBSISTING RESERVATIONS TO THE BASIC LAW CONTAINED IN THE MILITARY GOVERNORS DECLARATIONS OF 12 MAY 1949.

2. YOU ARE REQUESTED TO ENSURE THAT THE FOLLOWING VIEWS OF THE ALLIED KOMMANDATURA ON THE LEGAL POSITION ARE BROUGHT TO THE ATTENTION OF THE BERLIN KAMMERGERICHT BY THE STAATSANWALTSCHAFT AT THE HEARING OF THE APPLICATION REFERRED TO.

3. ON 20 DECEMBER 1952, IN BK/O (52)35 THE ALLIED KOMMANDATURA DIRECTED THAT IT WAS UNABLE TO AGREE TO THE TAKING OVER IN BERLIN OF THE LAW ON THE FEDERAL CONSTITUTIONAL COURT ON THE GROUNDS THAT EXTENSION OF THE COURT'S JURISDICTION TO BERLIN WOULD CONFLICT WITH THE ALLIED RESERVATIONS ON THE BASIC LAW OF THE FEDERAL REPUBLIC AND AS SET OUT IN BK/O(50)75 OF 29 AUGUST 1950 WHICH ITSELF REAFFIRMED THE STATEMENT ON PRINCIPLES OF 14 MAY 1949. THE ALLIED POSITION ON THE NON-COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT FOR BERLIN MATTERS WAS CONFIRMED AND ELABORATED IN BK/L(67)10 OF 24 MAY 1967 AND, MOST RECENTLY, IN BK/L(74)9 OF 12 MARCH 1974 ON THE BRUECKMANN CASE ITSELF.

4. THE ALLIED KOMMANDATURA ALSO REFERS TO THE LETTER OF THE THREE AMBASSADORS TRANSMITTING THE QUADRIPARTITE CONFIDENTIAL

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AGREEMENT OF 3 SEPTEMBER 1971 TO THE CHANCELLOR OF THE FEDERAL REPUBLIC OF GERMANY WHICH, IN CONNECTION WITH THE RELATIONSHIP BETWEEN THE WESTERN SECTORS OF BERLIN AND THE FEDERAL REPUBLIC OF GERMANY, NOTED SPECIFICALLY THE ALLIED RESERVATIONS ON THE FEDERAL CONSTITUTIONAL COURT.

5. IT IS THE VIEW OF THE ALLIED KOMMANDATURA, ON THE

BASIS OF THE DOCUMENTS MENTIONED ABOVE, THAT THE JUDGMENT
OF THE FEDERAL CONSTITUTIONAL COURT REFERRED TO IN PARAGRAPH 1
ABOVE SHOULD NOT BE ALLOWED TO INFLUENCE THE DECISION OF THE BERLIN
KAMMERGERICHT IN THE APPLICATION PRESENTLY BEFORE IT.

6. FOR THE CONVENIENCE OF THE COURT, I ATTACH COPIES
OF THE VARIOUS BK/O'S AND BK/L' REFERRED TO ABOVE.
THE ALLIED KOMMANDATURA WOULD ALSO HAVE NO OBJECTION TO
THIS LETTER BEING PRESENTED TO THE KAMMERGERICHT BY THE
STAATSANWALTSCHAFT.

CHAIRMAN DEPUTY COMMANDANT
END TEXT.KLEIN

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NNN

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